# SUPREME COURT OF THE UNITED STATES.

No. ~~283.~~ 153

THE UNITED STATES, APPELLANTS,

vs.

RUFINA CASTRO AND AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

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RUFINA CASTRO *et al*, claimants, } For lands near the mission of San
*vs.* Juan Bautista.
THE UNITED STATES, defendants. }

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3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this nineteenth of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Rufina Castro *et al.* for lands near the mission of S'n Juan Bautista was presented and ordered to be filed and docketed with No. 607, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *March* 4, 1853.

In case No. 607, Rufina Castro *et al.* for lands near San Juan Bautista, the deposition of José Castro, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T. annexed thereto, was filed.

(Vide page 4 of this transcript.)

SAN FRANCISCO, *Oct.* 7, 1853.

In the same case the deposition of José Antonio Auzar, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed.

(Vide page 6 of this transcript.)

SAN FRANCISCO, *Oct.* 11, 1853.

4 Case No. 607 was submitted on brief and taken under advisement.

SAN FRANCISCO, *July* 3, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

(Vide page 13 of this transcript.)

And the following order was made, to wit:

(Vide page 15 of this transcript.)

5 *Petition.*

Before the commission to settle private land claims in California.

Dn. Rufina Castro, Maria Antonia, José Maria, Ygnacio Antonio, Rosa, Concepcion, widow, and Gorje, children and heirs, give notice that they claim, by virtue of a title derived from the Mexican government, two certain tracts of land situate in Santa Clara county, in said State, and consisting of a building lot of one hundred varas front, by two hundred varas in depth, and of four "suertes," or farming lots, of two hundred varas square, each. Said lands were granted to Dn. Mariano Castro, on the 15th May, 1339, by Dn. José Castro, prefect of the first district of the Californias, pursuant to law, and to an order to that effect made by the governor of said department. Said grantee died about the year 1848, leaving said Dn. Rufina, his widow, and seven children, to wit: Maria Antonio, José Maria, Ygnacio, Antonio, Rosa, Concepcion, Gorgé, his heirs, the present claimants, whereby the title to said lands vested in them.

The original grant of said lands, and a translation of the same, are herewith filed by their attorneys.

JONES, CROCKETT & BAKER.

Filed in office Feb'y 19, 1853.
(Signed) GEO. FISHER, *Sec'y.*

6 *Deposition of José Castro.*

SAN FRANCISCO, *March* 4, 1853.

On this day, before Com'r H. J. Thornton, came José Castro, a witness in behalf of the claimants, Rufina Castro *et al.*, petition No. 607, and was duly sworn, his evidence being interpreted by the secretary.

In answer to inquiries by counsel for the claimant, witness testified as follows:

My name is José Castro; my age is forty-four years; I reside at Monterey. In the month of May, 1839, I held the office of prefect of the first district of California; a paper is now shown me purporting to be a grant of ownership or possession to Mariano Castro, dated nineteenth of May, 1839, for a lot of 100 varas in front, by 200 varas in depth; another of one hundred varas square, and four suertes, or farming lots, which paper is hereto attached, marked H. J. T., No. 1. The paper was signed by me as perfect, and at the time it bears date. José Maria Covarrubias was secretary of the prefect at that time, and his signature to said paper is genuine. I had an order from the governor to perform the act stated in said paper, which order was left by me among the archives of the prefect, when I ceased to hold the office; where it is now I do not know, nor do I know what has become of the archives. I delivered them to my successor in the latter part of the year 1839, or beginning of 1840. It was customary for the prefect to make grants of less than one square league of land,

7 and it was authorized by the constitution of Mexico of 1836, with the consent and advice of the governor. San Juan Bautisto and San Juan de Castro are one and the same place. Said Mariano Castro occupied the said lands from the time of the grant; he built a house, and had a garden on the building lots, and used the farming lots for agriculture. He, and his widow and children, have continued so to occupy them ever since. It was the policy of the government at that time to form a settlement at San Juan Bautista, to serve as a protection against the Indians, by inviting the rancheros in a body, and for that reason the prefect was ordered to make grants.

*Questions by the associate law agent.*

Did you receive any special order from the governor to make this particular grant, or was it made in virtue of general order from the governor, or was it in virtue of your general powers as prefect under the constitution?

Answer. It was by a special order from the governor in this particular case, which order was filed in the prefect's office, as heretofore stated; and it was also made by virtue of the powers conferred on the prefect by the constitution, and in pursuance of a verbal understanding which I had with the governor in relation to such grants.

Question. Had any lands been assigned to the town of San Juan as tierras communes, or common lands, at the time of your making this grant?

8 Answer. One league of land was reserved as common land for the first settlers at that place, to be divided among them; I mean one league in each direction from the centre, making four square leagues of land. The land granted as shown, was included in the four square leagues.

Question. Whose handwriting is the body of the before mentioned grant?

Answer. It is my handwriting.

JOSÉ CASTRO.

U. S. law agent present.

Sworn to and subscribed before me this 4th March, 1853.

H. J. THORNTON,
*Comm'r, &c.*

Filed in office March 4, 1853.

(Signed) GEO. FISHER, *Sec'y.*

9 *Deposition of José Ant. Auzar.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ETC., ETC.

This day, before Com'r Alpheus Felch, came José Antonio Auzar, a witness in behalf of claimants Rufina Castro *et al.*, No. 607, who, after being duly sworn, deposed as follows:

*Questions by claimant.*

What is your name, age, and place of residence?

Answer. My name is José Antonio Auzar, my age sixty years, and my residence San Juan Bautista, in California.

Are you acquainted with the original grantee of the land claimed in this case, if yea, state if you know whether he is dead or not, and whether the claimants in this case are his widow, and children, and heirs?

Answer. I know the grantee Mariano Castro, who died about the the year 1848, before the filing of the claim in this case. Rufina Castro, one of the claimants, was his widow, and the other claimants, viz.: Maria Antonio, José Maria, Ygnacio, Antonio, Rosa, Concepcion, and Gorje are his heirs and children.

Pr. J. A. AUZAR.

Mr. Greenhow, associate law agent, attended at the taking of this deposition, but propounded no interrogatories to the witness.

The testimony was given in the Spanish language, Mr. Fisher, secretary of the board, acting as interpreter.

Subscribed and sworn to before me at San Francisco, this seventh day of October, A. D. 1853.

ALPHEUS FELCH,
*Commissioner.*

Filed in office Oct'r 7, 1853.
(Signed) GEO. FISHER, *Sec'y.*

*Original grant A.—Exhibit No. 1. to deposition of Jose Castro in No. 607.—March 4th, 1853. Geo. Fisher, sec'y.*

Prefectura del lo distrito.

José Castro, teniente coronel de cabelleria del ejercito y prefect del distrito.

Consedo de conformidad con lo dispuesto por el s'or governador de departamento à Don Mariano Castro un solar de seis varas de frente y dos cientos de fondo sien varas en cuadro al frente de su casa en el lugar que compa con su huerta y las cuatro suertes de tierra que habra en el Rincon del Pajaro sin perjuicio de las Yndios que alli tienen terrenos concedidos.

San Juan Bautista, Mayo 19 de 1839.

JOSÉ CASTRO.

José Maria Covarrubias, *S'rio.*

Filed in office Feb'y 10, 1853.

GEO. FISHER, *Secy.*

11 *B.—Translation of grant.*

Prefecture of the district.

José Castro, lieutenant colonel of cavalry in the army and prefect of the district.

I hereby grant as directed by his exc'll'y the governor of the department to Don Mariano Castro, a plat of ground (solar) of one hundred yards, 33⅓ inch, (varas) front and two hundred yards deep, a square of one hundred varas in front of his house, being the spot which is occupied by his garden, and the four pieces of land (suertes de tierra) which he cultivates on the Rincon del Pajaro, without detriment, however, to the Indians who there have lands which have been granted to them.

San Juan Bautista, May 19, 1839.

JOSÉ CASTRO.

JOSE MARIA COVARRUBIAS, *Secretary.*

Received for record 9th Oct'r, A. D. 1850, at 10 a. m.; recorded in "Deeds of Grants" C, page 33.

(Signed) WM. S. JOHNSON,
*Recorder of Monterey Co.*

Filed in office Feb'y 19, 1853.

(Signed) GEO. FISHER, *Sec'y.*

12 *Opinion of the board, delivered by commissioner R. Aug. Thompson.*

RUFINA CASTRO *et al.*
*vs.*
THE UNITED STATES.

This is claim by the widow and heirs of Mariano Castro, deceased, for a building lot one hundred by two hundred varas, a garden lot, one hundred varas square, and four suertes, or farm lots, each two hundred varas square, situated within the common lands of the town of San Juan Bautista.

It is founded on a grant made by José Castro, prefect of the district, dated May 19, 1839. The original grant is introduced and proved to be genuine. This claim involves the same questions which were decided by the board in case No. 297, Manuel Larios *vs.* the United States, and a decree will be entered in favor of the present claimants in accordance with the principles laid down in the opinion delivered in that case.

Filed in office July 3, 1855.

(Signed) GEO. FISHER, *Sec'y.*

13 *Decree of confirmation.*

RUFINA CASTRO *et al.*
*vs.*
THE UNITED STATES. } 607.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is valid and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated within the limits of the common lands of the town of San Juan Bautista, and consists of one building lot, one hundred varas front by two hundred varas deep; one garden lot in front of the house of the original grantee, one hundred varas square; and four suertes, or farming lots, of two hundred varas square each, as shown by the original grant, filed in this case, to which reference is hereby made for a more particular description.

R. AUG. THOMPSON,
J. B. FARWELL, *Comm's.*

Filed in office July 3, 1855.
(Signed) GEO. FISHER, *Sec'y.*

14 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary. One of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

15 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CAL'A.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifteen pages, numbered from 1 to 15, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 607 on the docket of the said board, wherein Rufina Castro *et al.* are the claimants against the United States, for the place known by the name of "Land near the mission of San Juan Bautista."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, Califor-

[SEAL.] nia, the twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Filed December 6th, 1855.

C. E. CARR, *Cl'k,*
By SAM'L R. DUMMER, *Dep'ty.*

16

17 *Notice of appeal.*

607.—"Land near the mission of San Juan Bautista."—Rufina Castro *et al.*, claimants.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
*Washington*, 31*st Dec.*, 1855.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING,
*Attorney General.*

Filed Feb'y 12th, 1856.

C. E. CARR, *Cl'k.*

18

19 In the district court of the United States for the southern district of California.

CITY AND COUNTY OF LOS ANGELES,
*State of California:*

RUFINA CASTRO *et al.*, appellees, *ads.* THE UNITED STATES, appellant. } Docket No. 350.—Transcript No. 607.

To the Hon. Isaac S. K. Ogier, Judge:

The petition of Pacificus Ord. a resident of said city, county, and State, attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court in the name and behalf of the United States, represents as follows: That heretofore, to wit, on or about the 19th day of February, A. D. 1853, Rufina Castro *et als.* presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, claiming two tracts of land near San Juan Bautista, in the county of Monterey, State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript

hereafter referred to. That thereafter, to wit, on or about the 3d day of July, A. D. 1855, the said commissioners confirmed, by final decision, the said claim of said petitioner. That thereafter, to wit, on or about the 6th day of December, A. D. 1855, a duly certified transcript of the proceedings and decision of the said commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 607, reference to which, it is prayed, may be had, and made part of this petition; that on or about the 18th day of December, A. D. 1855, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said commissioners in said cause, and the papers and evidence on which said decision was founded; that thereafter, to wit, on or about the 12th day of February, A. D. 1856, the said Attorney General of the United States filed, or caused to be filed, in behalf of the United States, a notice with the clerk of said district court of the United States, that the appeal in said cause from the said decision of the said commissioners, in the district court of the United States for the southern district of California, would be prosecuted by the United States. Your petitioner further represents that the land claimed as aforesaid is situate in the southern district of California, and within the jurisdiction of this honorable court. Your petitioner further represents and insists that the said claim is invalid, and the said decision of said commissioners is erroneous, and ought to be reversed, revised, and set aside, for many errors and imperfections of law and evidence, apparent in said certified transcript of the proceedings and decisions of said commissioners in said cause, filed and appealed from as aforesaid. And your petitioner denies all and singular each and every allegation in the said petition of said claimant, presented as aforesaid to said commissioners. And your petitioner further denies that the said claimants have any valid right or title to said land, claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said commissioners, or in support of the said claim, no decision, confirming the same, should have been made by said commissioners, but the said claim should have been rejected by them. And the said claimant having no valid right or title, derived from the Spanish or Mexican governments, to the land claimed as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to, the United States, by virtue of conquest and the treaty of peace, friendship, limits and settlement, between the United States and the republic of Mexico, made at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, A. D. 1851,

and the laws and statutes in such case made and provided, prays that the said claimant, or his attorney, may be served with a copy of this petition; and that this honorable court will review the said decision of said commissioners, and reverse the same, and decide on the validity of the same, and decree the alleged title to be invalid, with costs and general relief.

P. ORD,
*Attorney of the United States for the Southern District of California.*

Filed this 5th January, 1857.

C. SIMS, *Clk*,
Pr. J. H. COLEMAN, *Dep'ty.*

21

22

23 *Summons.*

UNITED STATES OF AMERICA,
*Southern District of California, ss:*

The President of the United States to Rufina Castro *et al.*, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against you and each of you in the district court of the United States in and for the southern district of California, on the 5th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, at the city and county of Los Angeles, in said district, by P. Ord, U. S. att'y, praying said court to review the decision of the board of land commissioners of the 3d July, 1855, confirming your claim to land near San Juan Bautista, in the county of Monterey; and that you and each of you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days, if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that judgment by default will be taken against you and each of you, and the prayer of the said petitioner will be granted with costs.

Witness whereof, I have hereunto set my hand and affixed the seal of the said court this 31st day of January, in the year of our [SEAL.] Lord one thousand eight hundred and fifty-seven, at Los Angeles aforesaid.

C. SIMS, *Clerk*,
P'r J. H. COLEMAN, *Dep'ty.*

24 Received Feb'y 3d, 1857.

EDWARD HUNTER,
P'r M. S. GOODMAN, *Dep'ty.*

I served this summons, along with the proper copy of the petition, upon Rufina Castro, at San Juan Bautista, in the southern district of California, on the 5th day of June, A. D. 1858.

JAMES C. PENNIE,
*U. S. Marshal for the Southern District of California.*

Filed 10th July, 1858.

C. SIMS, *Clerk.*
P'r J. H. COLEMAN, *Dep'y.*

25 *Continuance.*

United States district court, south'n dist. Cal'a.—Intermediate term, A. D. 1862.

OCTOBER 6TH, A. D. 1862.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.* } No. 350.
*vs.*
THE UNITED STATES. }

Ordered that this case be continued until the next term of this court.

*Continuance.*

United States district court, south'n dist. California.—Regular June term, A. D. 1863.

JUNE 1ST, A. D. 1863.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.* } No. 350.
*vs.*
THE UNITED STATES. }

This case passed informally.

26 *Submission of cause.*

United States district court, south'n district California.—Regular June term, A. D. 1863.

JUNE 29TH, A. D. 1863.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.* } No. 350.
*vs.*
THE UNITED STATES. }

This cause being called this day, and claimants failing to appear in person or by attorney, the U. S. dist. att'y submits the same to the court, by whom it is taken under advisement.

*Decision.*

United States district court, south'n dist. Cal'a.—Regular June term, 1863.

MONTEREY, *October* 19*th*, *A. D.* 1863.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.*, appellees, } No. 350.
*vs.*
THE UNITED STATES, appellant. }

Now, on this day, present the U. S. dist. att'y on part of the United States, the court renders its decision confirming the decree of the board of U. S. land commissioners in this case, and confirming the claim of the claimants and appellees herein, and a decree in accordance therewith is duly signed by the court and filed.

27 *Decree.*

In the district court of the United States for the southern district of California.—Regular June term, 1863.

MONTEREY, *October* 19*th*, 1863.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.* appellees, } No. 350.—"Lands near San Juan."
*ads.*
THE UNITED STATES, appellants. }

This cause coming up on appeal from the decision of the board of United States land commissioners to ascertain and settle private land claims in the State of California, on a transcript of the proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and it appearing to the court that said transcript had been filed according to law.

It is ordered, adjudged, and decreed that the decision of said board of commissioners be, and the same is hereby confirmed, and the title of the appellees to the lands claimed by them be held to be good and valid.

The land of which confirmation is hereby made is situated within the common lands of the town of San Juan Bautista, and consists of one building lot, one hundred varas front by two hundred varas deep; one garden lot in front of the house of the original grantee, one hundred varas square; and four suertes or farming lots, of two hundred varas square each, as shown by the original grant filed in the case, to which reference is hereby made for a more particular description.

28 Thus done and signed in open court this the 19th day of October, A. D. 1863.

FLETCHER M. HAIGHT,
*Judge U. S. Dist. C't, S. Dist. Cal'a.*

Filed October 19th, A. D. 1863.

JOHN O. WHEELER, *Clerk.*

29 *Appeal.*

United States dist. court, south'n dist. Cal'a.—Regular June term, 1863.

OCTOBER 22D, 1863.

Hon. Fletcher M. Haight, judge.

RUFINA CASTRO *et al.*, appellees, *ads.*
THE UNITED STATES, appellants. } No. 350.—"Lands near San Juan."

On motion of B. C. Whiting, U. S. dist. att'y, it is ordered that an appeal be and hereby is allowed the United States to the Supreme Court of the United States from the decree of this court, confirming the claim of said appellees heretofore rendered herein.

31 United States district court, south'n dist. of California.

CLERK'S OFFICE, *Monterey, Oct. 22d*, 1863.

I, John O. Wheeler, clerk of the United States dist. court for the south'n dist. of California, do hereby certify the above and foregoing thirty pages, numbered from 1 to 30, both inclusive, contain a full true and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence and testimony of the witnesses upon which said decision was founded on file in my office, in case No. 350 upon the docket thereof, wherein Rufina Castro *et al.* are claimants against the United States for "lands near San Juan."

[SEAL.] In testimony whereof, I hereunto set my hand and affix the seal of said court at Monterey this the 22d day of October, A. D. 1863.

JOHN O. WHEELER,
*Cl'k of Dist. Court, South'n Dist. Cal'a.*

Filed December 1, 1863.